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THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THOMAS ALVORD,

Plaintiff,

v.

ON DECK CAPITAL, INC.,

Defendant.

**DEFENDANT'S NOTICE OF
FILING OF NOTICE OF
REMOVAL**

Case No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendant On Deck Capital, Inc. (“OnDeck”), by counsel, hereby removes this action from the Justice Court of Utah, Fourth Judicial District Utah County, Utah, to the United States District Court for the District of Utah. Removal is proper because this Court has original jurisdiction based on federal question jurisdiction pursuant to 28 U.S.C. § 1331. In support thereof, OnDeck states as follows:

INTRODUCTION

1. This action was commenced on February 11, 2019, in the Justice Court of Utah, Fourth Judicial District Utah County, Utah, styled *Thomas Alvord v. On Deck Capital, Inc.*, case number 198100051 (the “State Court Action”).

2. A copy of the Affidavit and Summons (Small Claims) filed in the State Court Action is attached as **Exhibit A**. These documents constitute all process, pleadings, and orders served upon OnDeck in this action. *See* 28 U.S.C. § 1446(a).

3. OnDeck was served with process on February 13, 2019.

4. This Notice of Removal is being filed within thirty days of OnDeck's receipt of the Affidavit and Summons and within one (1) year of the action's commencement date, making the action timely removed pursuant to 28 U.S.C. § 1446(b), (c)(1).

5. A true and correct copy of this Notice of Removal will promptly be filed in the Justice Court of Utah, Fourth Judicial District Utah County, Utah. A true and correct copy of the Notice of Filing of Notice of Removal is attached as **Exhibit B**.

6. Furthermore, this Notice of Removal is being served on all adverse parties as required by 28 U.S.C. § 1446(d).

7. The action is premised upon Plaintiff's assertion that OnDeck violated 47 U.S.C. § 227(b)(1)(A) of the Telephone Consumer Protection Act ("TCPA") [Ex. A ¶ 2.]. Plaintiff asserts that OnDeck used a "prerecorded voice" six different times to call his cellular phone, in violation of the TCPA.

8. OnDeck denies the allegations in the Affidavit, denies that Plaintiff has stated any claim for which relief may be granted, and denies that Plaintiff has suffered damages in any manner whatsoever. Nevertheless, assuming for jurisdictional purposes only that Plaintiff's claims are valid, Plaintiff could have filed the Complaint in this Court under federal question jurisdiction.

FEDERAL JURISDICTION

9. Plaintiff's claims arise out of assertions that OnDeck violated 47 U.S.C. § 227(b)(1)(A) of TCPA. [Ex. A ¶ 2.]

10. Specifically, Plaintiff claims OnDeck used a “prerecorded voice” six different times when calling his cellular phone. [Ex. A ¶ 2.]

11. District courts have “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

12. Plaintiff asserts that On Deck violated the federal Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A). [Ex. A ¶ 2.]

13. As such, pursuant to 28 U.S.C. § 1331, federal question jurisdiction exists over this action because Plaintiff’s allegations require resolving issues that arise under the TCPA, a federal law. Particularly, this matter necessitates the application of federal law, and that federal law determines the rights and liabilities of the parties, which warrants a proper exercise of federal question jurisdiction.

VENUE

14. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a), because this district and division embrace the Justice Court of Utah, Fourth Judicial District Utah County, the forum from which the case has been removed. Further, the six telephone calls at issue were allegedly made to a cellular telephone located in this judicial district.

CONCLUSION

15. For the reasons stated above, OnDeck hereby removes this action to this Court.

Dated: March 14, 2019

Respectfully submitted,

ON DECK CAPITAL, INC.

By: Jennifer Mathis

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